

Update: Adoption Proceedings Benchbook

CHAPTER 1

Introduction

1.3 Purposes of the Adoption Code

Effective December 28, 2004, 2004 PA 487 amended MCL 710.21a. The amendments expanded the purposes of the Adoption Code. On page 4, add the following text to the quoted statute before section 1.4:

“(d) To achieve permanency and stability for adoptees as quickly as possible.

“(e) To support the permanency of a finalized adoption by allowing all interested parties to participate in proceedings regarding the adoptee.”

CHAPTER 2

Freeing a Child for Adoption

2.9 Withholding Consent

A. Motion to Determine if Arbitrary and Capricious

Near the top of page 41, after the quote of MCL 710.42(2)(a)–(b) insert the following text:

The court shall provide notice of a motion to determine if a denial of consent was arbitrary and capricious to all of the following:

- ♦ The petitioner or petitioners.
- ♦ The adoptee, if over 14 years of age.
- ♦ A minor parent, adult parent, or surviving parent of an adoptee, unless one or more of the following apply:
 - the parental rights of the parent have been terminated.
 - a guardian of the adoptee, with specific authority to consent to adoption, has been appointed.
 - a guardian of the parent, with specific authority to consent to adoption, has been appointed.
 - the parent has released parental rights.
 - the parent has consented to the adoption.
- ♦ The FIA or child placing agency to which the adoptee has been, or is proposed to be, released or committed by an order of the court.
- ♦ A parent, guardian, or guardian ad litem of an unemancipated minor parent of the adoptee.
- ♦ The court with permanent custody of the adoptee.
- ♦ A child placing agency of another state or country that has the authority to consent to adoption.
- ♦ The guardian or guardian ad litem of an interested party.
- ♦ The prospective adoptee's guardian ad litem if one has been appointed during a child protection proceeding.
- ♦ The prospective adoptive parent who received consent to adopt.

MCL 710.24a(1) and MCL 710.45(5).

CHAPTER 2

Freeing a Child for Adoption

2.9 Withholding Consent

B. Disposition

Effective December 28, 2004, 2004 PA 486 amended MCL 710.45. If the court finds clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court is required to issue a written decision. On page 42, replace the quote of MCL 710.45(6) with the following text:

On the other hand, MCL 710.45(8)* states:

“If the court finds by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court shall issue a written decision and may terminate the rights of the appropriate court, child placing agency, or [FIA] and may enter further orders in accordance with this chapter or section 18 of chapter XIIA as the court considers appropriate. In addition, the court may grant to the petitioner reimbursement for petitioner’s costs of preparing, filing, and arguing the motion alleging the withholding of consent was arbitrary and capricious, including a reasonable allowance for attorney fees.”

*MCL
710.45(6) has
been
renumbered as
MCL
710.45(8).

CHAPTER 4

Jurisdiction, Venue, and Petition Requirements

4.2 Venue

Effective December 28, 2004, 2004 PA 487 amended MCL 710.24. On pages 125–126, delete the first three paragraphs of Section 4.2 and replace them with the following text:

When there is one applicant for adoption, venue is proper in adoption proceedings in the county where the following circumstances exist:

- the petitioner resides; or
- the adoptee is found; or
- if the petitioner and adoptee reside out of state, where the parent's parental rights were terminated or are pending termination; or
- if both parents' parental rights were terminated at different times and in different courts, in the county where parental rights were first terminated. MCL 710.24(1).

If a temporary placement of the child has already occurred, venue is proper in the county where the child's parent, the child's guardian, or the prospective adoptive parent resides, or where the child is found. MCL 710.24(1) and 710.23d.

If there is more than one applicant for adoption, the petition for adoption shall be filed in the court in the county where the parent's parental rights were terminated or are pending termination. If both parents' parental rights were terminated at different times and in different courts, an adoption petition shall be filed where parental rights were first terminated. MCL 710.24(2).

If a petition to adopt is filed in a county other than the county where the petitioner resides or the prospective adoptee is found, the chief judge of the court may, upon motion, enter an order transferring jurisdiction of the matter to the court of the county in which the petitioner resides or the prospective adoptee is found. MCL 710.24(3).

CHAPTER 4

Jurisdiction, Venue, and Petition Requirements

4.6 Petition Requirements

Effective December 28, 2004, 2004 PA 487 amended MCL 710.24. On page 136 replace the first paragraph and quote with the following text:

In order to adopt a child, the adoptive parent or parents must file a petition for adoption. MCL 710.24(1)–(3) govern the filing of petitions:

“(1) If a person desires to adopt a child or an adult and to bestow upon the adoptee his or her family name, or to adopt a child or an adult without a name change, with the intent to make the adoptee his or her heir, that person, together with his wife or her husband, if married, shall file a petition with the court of the county in which the petitioner resides or where the adoptee is found or, if the petitioner and adoptee reside out of state, where the parent’s parental rights were terminated or are pending termination. If both parents’ parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated. If there has been a temporary placement of the child, the petition for adoption shall be filed with the court that received the report described in [MCL 710.23d(2)*].

“(2) In an adoption proceeding in which there is more than 1 applicant, the petition for adoption shall be filed with the court of the county where the parent’s parental rights were terminated or are pending termination. If both parents’ parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated.

“(3) If a petition to adopt is filed in a county other than that in which the petitioner resides or the prospective adoptee is found, the chief judge of the court may, upon motion, enter an order transferring jurisdiction of the matter to the court of the county in which the petitioner resides or the prospective adoptee is found.”

*See Section 5.2 for more information on MCL 710.23d.

CHAPTER 4

Jurisdiction, Venue, and Petition Requirements

4.6 Petition Requirements

D. Filing and Notice Requirements

Effective December 28, 2004, 2004 PA 487 amended MCL 710.24. On page 140 replace the first paragraph with the following text:

When there is one applicant for adoption, venue is proper in adoption proceedings in the county where the following circumstances exist:

- the petitioner resides; or
- the adoptee is found; or
- if the petitioner and adoptee reside out of state, where the parent's parental rights were terminated or are pending termination; or
- if both parents' parental rights were terminated at different times and in different courts, in the county where parental rights were first terminated. MCL 710.24(1).

If a temporary placement of the child has already occurred, venue is proper in the county where the child's parent, the child's guardian, or the prospective adoptive parent resides, or where the child is found. MCL 710.24(1) and 710.23d.

If there is more than one applicant for adoption, the petition for adoption shall be filed in the court in the county where the parent's parental rights were terminated or are pending termination. If both parents' parental rights were terminated at different times and in different courts, an adoption petition shall be filed where parental rights were first terminated. MCL 710.24(2).

If a petition to adopt is filed in a county other than the county where the petitioner resides or the prospective adoptee is found, the chief judge of the court may, upon motion, enter an order transferring jurisdiction of the matter to the court of the county in which the petitioner resides or the prospective adoptee is found. MCL 710.24(3).

CHAPTER 4

Jurisdiction, Venue, and Petition Requirements

4.6 Petition Requirements

E. Interested Parties

Effective December 28, 2004, 2004 PA 487 amended MCL 710.24a. On page 141, replace quoted subsection (a) with the following text:

“(a) The petitioner or petitioners.”

CHAPTER 5

Temporary Placements, Investigation Reports, and the Safe Delivery of Newborns

5.4 Resolving Custody Disputes After a Temporary Placement

B. Hearing to Determine Custody

Effective December 28, 2004, 2004 PA 487 amended MCL 710.24a(5). Near the top of page 170, replace quoted subsection (g) with the following text:

“(g) The guardian ad litem of any interested party, if a guardian ad litem has been appointed.”

CHAPTER 6

Formal Placement and Action on the Adoption Petition

6.4 Granting or Denying the Adoption Petition

A. Granting the Adoption Petition

Insert the following text on page 200, after the sentence beginning “No formal hearing is required . . .”:

Effective December 28, 2004,* the court may allow the child to attend his or her adoption hearing. MCL 710.23a(5).

*2004 PA 487.

Effective December 28, 2004, 2004 PA 487 amended MCL 710.56. Replace the quotation of MCL 710.56(2) with the following text:

MCL 710.56(2)–(4) state:

“(2) Except as provided in subsection (3), if a petition for rehearing or an appeal as of right from an order terminating parental rights has been filed, the court shall not order an adoption until 1 of the following occurs:

“(a) The petition for rehearing is granted, and at the rehearing the order terminating parental rights is not modified or set aside, and subsequently the period for appeal as of right to the court of appeals has expired without an appeal being filed.

“(b) The petition for rehearing is denied and the period for appeal as of right to the court of appeals has expired without an appeal being filed.

“(c) The court of appeals affirms the order terminating parental rights.

“(3) If an application for leave to appeal has been filed with the supreme court, the court shall not order an adoption until 1 or more of the following occurs:

“(a) The application for leave to appeal is denied.

“(b) The supreme court affirms the order terminating parental rights.

“(4) If a motion brought under [MCL 710.45] has been filed, the court shall not order an adoption until 1 of the following occurs:

“(a) The motion is decided and subsequently the period for appeal as of right to the court of appeals has expired without an appeal being filed.

“(b) The motion is decided, an appeal as of right to the court of appeals has been filed, the court of appeals issues an opinion, and subsequently the period for filing an application for leave to the supreme court has expired without an application being filed.

“(c) The supreme court denies an application for leave or, if an application is granted, the supreme court issues an opinion.”

CHAPTER 6

Formal Placement and Action on the Adoption Petition

6.8 Adult Adoption

Effective December 28, 2004, 2004 PA 487 amended MCL 710.24a. On page 208, replace quoted subsection (a) with the following text:

“(a) The petitioner or petitioners.”

CHAPTER 7

Rehearings, Appeals, Rescissions, and Dissolutions

7.1 Purposes of the Adoption Code

Effective December 28, 2004, 2004 PA 487 amended MCL 710.21a. The amendments expanded the purposes of the Adoption Code. On page 212, add the following text to the quoted statute before Section 7.2:

“(d) To achieve permanency and stability for adoptees as quickly as possible.

“(e) To support the permanency of a finalized adoption by allowing all interested parties to participate in proceedings regarding the adoptee.”

CHAPTER 7

Rehearings, Appeals, Rescissions, and Dissolutions

7.3 Appeals to the Family Division of Circuit Court

A. Consent to Adoption Withheld

1. Motion to Determine if Arbitrary and Capricious

On page 219, after the quote of MCL 710.45(2)(a)–(b) insert the following text:

The motion must be filed along with the adoption petition. MCL 710.45(1). MCL 710.45(4) states:

“In an adoption proceeding in which there is more than 1 applicant, the petition for adoption shall be filed with the court of the county where the parent’s parental rights were terminated or are pending termination. If both parents’ parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated.”

The court shall provide notice of a motion to determine if a denial of consent was arbitrary and capricious to all of the following:

- ◆ The petitioner or petitioners.
- ◆ The adoptee, if over 14 years of age.
- ◆ A minor parent, adult parent, or surviving parent of an adoptee, unless one or more of the following apply:
 - the parental rights of the parent have been terminated.
 - a guardian of the adoptee, with specific authority to consent to adoption, has been appointed.
 - a guardian of the parent, with specific authority to consent to adoption, has been appointed.
 - the parent has released parental rights.
 - the parent has consented to the adoption.
- ◆ The FIA or child placing agency to which the adoptee has been, or is proposed to be, released or committed by an order of the court.

- ♦ A parent, guardian, or guardian ad litem of an unemancipated minor parent of the adoptee.
- ♦ The court with permanent custody of the adoptee.
- ♦ A child placing agency of another state or country that has the authority to consent to adoption.
- ♦ The guardian or guardian ad litem of an interested party.
- ♦ The prospective adoptee's guardian ad litem if one has been appointed during a child protection proceeding.
- ♦ The prospective adoptive parent who received consent to adopt.

MCL 710.24a(1) and MCL 710.45(5).

CHAPTER 7

Rehearings, Appeals, Rescissions, and Dissolutions

7.3 Appeals to the Family Division of Circuit Court

A. Consent to Adoption Withheld

3. Disposition

Effective December 28, 2004, 2004 PA 486 amended MCL 710.45. If the court finds clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court is required to issue a written decision. On page 221, replace the quote of MCL 710.45(6) with the following text:

On the other hand, MCL 710.45(8)* states:

“If the court finds by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court shall issue a written decision and may terminate the rights of the appropriate court, child placing agency, or [FIA] and may enter further orders in accordance with this chapter or section 18 of chapter XIIA as the court considers appropriate. In addition, the court may grant to the petitioner reimbursement for petitioner’s costs of preparing, filing, and arguing the motion alleging the withholding of consent was arbitrary and capricious, including a reasonable allowance for attorney fees.”

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CHAPTER 7

Rehearings, Appeals, Rescissions, and Dissolutions

7.3 Appeals to the Family Division of Circuit Court

A. Consent to Adoption Withheld

3. Disposition

Insert the following text before subsection (B) on page 222:

Effective December 28, 2004, the court's decision on a motion to determine if denial of consent was arbitrary and capricious is appealable by right to the Court of Appeals. MCL 710.45(10), as amended by 2004 PA 486.

*See Section 7.4(A) for the procedures for an appeal of right.

CHAPTER 8

Direct Placement Adoption, Step-Parent Adoption, Relative Adoption, and “Legal Risk” Placement

8.2 Requirements for Attorneys and Adoption Facilitators

A. Adoption Attorney

Effective December 28, 2004, 2004 PA 487 amended MCL 710.22. The amendments eliminated the requirements for an “adoption attorney” that were set forth in the Adoption Code. On page 242, replace the quotation of MCL 710.22(b) with the following text:

MCL 710.22(b) defines “adoption attorney” as “an attorney acting as counsel in an adoption proceeding or case.”

CHAPTER 8

Direct Placement Adoption, Step-Parent Adoption, Relative Adoption, and “Legal Risk” Placement

8.4 Relative Adoption

Effective December 28, 2004, 2004 PA 487 amended MCL 710.22. The amendments added a definition of “relative.” On page 251 insert the following text at the beginning of this section:

MCL 710.22(t) defines “relative” as “an individual who is related to the child within the fifth degree by marriage, blood, or adoption.”